DOCUMENT RESUME

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ABSTRACT

Prepared by the District of Columbia Street Law Project for its 11th annual city-wide mock trial competition, this instructional handout provides material for a civil trial over a disputed discriminatory termination of employment. Vincent Taylor claims that the Lance Memorial Hospital for Women fired him on the basis of his sex. The hospital claims that Taylor was discharged for negligence, lack of cooperation, and inadequate patient care. The handout clarifies the laws and explains the legal precedents. As evidence, the handout provides a policy statement of the hospital about male nurses; the refusal to transfer Taylor to the cardiac care unit; Taylor's performance record; the letter that terminated his employment; and witness statements from Taylor, a co-worker at the hospital, the former nursing director who hired Taylor, the present director who fired him, the chief administrator of the hospital, and a patient who was dissatisfied with Taylor. Through participation in mock trials and analysis of the activity, students gain an insider's perspective on courtroom procedure and a basic understanding of the legal mechanism through which society resolves its disputes. Mock trials develop critical analysis, questioning and listening skills, and skills in preparing and organizing materials. (JD)

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1982 STREET LAW MOCK TRIAL Competition Materials

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SO 024 462

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

CIVIL DIVISION

VINCENT TAYLOR, plaintiff	)	
	)	
	)	
versus	)	
	)	
	)	
LANCE MEMORIAL HOSPITAL	)	No. MT-82
FOR WOMEN,	)	
	)	
RAYMOND MILLER, M.D.,	)	
	)	
AND DOROTHY DILLON, R.N.,	)	
	)	
defendants	)	

STATEMENT OF STIPULATED FACTS *

Lance Memorial Hospital for Women, founded in 1921, is a small, private facility exclusively devoted to the medical care of women. The hospital has sixty beds. As of the payroll dated October 30, 1981, the staff of Lance was composed as follows:

Position	Male	Female
Staff Doctors	9	5
Staff Nurses	1	34
Nursing Assts.	0	16
Phys. Therapists	2	5
Occup. Therapists	3	4
Dieticians	1	2
Administrative Staff (non-medical)	2	6
General Support (incl. custodial)	8	15
TOTAL	26	87

*This case is completely hypothetical. Any resemblance between the fictitious persons, facts, and circumstances described in this mock trial and real persons, facts, and circumstances is coincidental.

Vincent Taylor was the sole male nurse on Lance's staff. Dr. Raymond Miller was, and is, the chief administrator of the Hospital. Mrs. Dorothy Dillon was, and is, the Nursing Director.

Vincent Taylor was hired on March 1, 1981. At that time, Mrs. Linda Brownlee was the Nursing Director, and she was responsible for hiring. Mrs. Brownlee was killed in early July, 1981. Dorothy Dillon was appointed to take Mrs. Brownlee's place.

By a letter dated November 25, 1981, Dorothy Dillon terminated Vincent Taylor's employment. The grounds for Mr. Taylor's termination are stated in that letter. Mr. Taylor disputes the stated grounds, and this dispute is the basis for this lawsuit.

STATEMENT OF LEGAL ISSUES

As a result of his termination by Lance Memorial Hospital, Mr. Vincent Taylor has brought this suit alleging that the Hospital, its Chief Administrator and Nursing Director, illegally discriminated against him on the basis of his sex.

This cause of action is brought under the D.C. Human Rights Act, D.C. Code §1-2501, et seq., which states in relevant part:

D.C. Code §1-2512 Unlawful Discriminatory Practices in Employment

(a) General. - It shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation of any individual:

(1) To fail or refuse to hire, or to discharge, any individual; or otherwise to discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee;

D.C. Code §1-2556 allows a private cause of action to be brought under the D.C. Human Rights Act in a court of competent jurisdiction without first pursuing the complaint with the Office of Human Rights. Mr. Taylor has not filed a complaint with the Office of Human Rights.

In his suit, Mr. Taylor will produce witnesses and documents to prove, by a preponderance of the evidence, that

(1) he was fired from Lance because of his sex;
(2) he was denied a request for transfer to the cardiac care unit because of his sex;
(3) he was assigned to an undesirable work shift because of his sex;
(4) that his supervisor's pattern of monitoring and evaluating his work performance was discriminatory;
(5) that findings of inadequate work performance and negligence on his part cannot be supported in fact, and any such facts brought forward must be scrutinized in light of his supervisor's discriminatory practices.

In their defense, the hospital and administrators will produce witnesses and documents to demonstrate:

(1) that Mr. Taylor was fired because of negligence, lack of cooperation, and inadequate patient care, and that these charges are supported by the facts;
(2) that at no time was Mr. Taylor treated differently from any other nurse because of his sex;
(3) that any instance in which Mr. Taylor might have been treated differently from any other nurse resulted from his performance alone.

Should the court find for the plaintiff, Mr. Taylor requests as relief:

(1) reinstatement to the nursing staff at Lance and assignment to the cardiac care unit;
(2) compensatory damages, in the amount of $10,000 for back pay to December 1, 1981, and for the difference in pay Taylor would have received as a cardiac care specialist;
(3) payment of attorneys fees and all court costs by Lance.

The defendants ask the court to find for them, and to order the plaintiff to pay their attorneys fees and court costs.

WITNESS LIST

For the Plaintiffs

Vincent Taylor, plaintiff

Harriet Dawson, former supervisor of Mr. Taylor

Sheila Gray, colleague of Mr. Taylor at Lance

For the Defense

Dorothy Dillon, defendant, Nursing Director at Lance

Raymond Miller, defendant, Chief Administrator at Lance

Donna Winters, former patient at Lance

DOCUMENTS**

Memorandum of February 15, 1981 from Dillon to Brownlee
Handwritten note of 11/20 from Miller to Dillon

Personnel File of Mr. Taylor

Includes: Letter of Termination, November 25, 1981
September 15, November 1 personnel evaluation forms

August 10, 1981 memorandum denying transfer to cardiac care unit

**IT IS STIPULATED THAT ALL DOCUMENTS ARE AUTHENTIC AND MAY NOT BE CHALLENGED ON THE GROUNDS OF AUTHENTICITY.

WITNESS FOR THE PLAINTIFF

VINCENT TAYLOR

My name is Vincent Taylor. I am 33 years old. I live at 1318 Jackson Street, N.E. I am a Registered Nurse.

My interest in a nursing career developed during my tour of duty as a paramedic in Vietnam. After my service in the war, I was assigned to the Walter Reed Army Medical Center here in Washington. I completed my nursing training theres, and in 1977 I became licensed as a registered nurse.

In 1978 I left the military service and joined the nursing staff of the Washington Hospital Center. In 1981, I decided I wanted to work in a smaller hospital where I could receive specialized training as a cardiac care nurse, an interesting specialty which also generally pays more than a staff nurse position. My supervisor at the Hospital Center referred me to Lance Memorial Hospital for Women. Lance seemed ideal, both for its small size and excellent reputation for cardiac care.

I was hired by Lance in March, 1981. Mrs. Linda Brownlee was the Nursing Director who hired me. She told me that I was the first male nurse to be hired by Lance in its sixty-year history. She welcomed me to the staff, but she also warned me that some of the nurses might have a little trouble getting used to having me around.

I did not encounter any serious difficulties with any of the nurses except one: Dorothy Dillon, who was the Assistant Director of Nursing when I started. I thought her reception was downright hostile. During my first day at Lance Mrs. Dillon told me flat out that she believed that a male nurse would not be well received by the patients at Lance, and that I would certainly have to work extra hard to prove myself. I told Mrs. Dillon that, having survived the war in Vietnam, I was sure I could survive Lance Memorial.

Sadly, Mrs. Brownlee was killed in a car accident in July, 1981. Dorothy Dillon was promoted to Nursing Director. Frankly, knowing that Mrs. Dillon was watching me like a hawk made me very nervous, particularly now that she was the Nursing Director. She made me so nervous that I dropped a dinner tray all over a patient when she suddenly appeared in a room as I was serving dinner. As Mrs. Dillon helped to clean up the mess she said to the patient, "Well, what do you expect from a male nurse? They just don't belong in a place like this."

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Shortly before Mrs. Brownlee was killed I had requested transfer to the cardiac care unit, to begin my specialized training there. The transfer would have meant a ten percent salary increase as well. Mrs. Brownlee assured me that the transfer would go through without a problem. On August 10, 1981, I received a memo from Mrs. Dillon denying my transfer request. In addition, she advised me that I was being reassigned to the night shift, 11 p.m. to 7 a.m. No other nurse was reassigned.

I went directly to Mrs. Dillon and asked for an explanation of the reassignment. She replied, "Why does it matter to you? A single man like yourself shouldn't mind working nights. Besides, maybe this will help Nurse Gray concentrate on her work more." Nurse Gray was one of my co-workers on the day shift, and Mrs. Dillon did not like the fact that we went out once in a while. I was furious with Dillon's comment. I complained to the Chief Administrator Dr. Miller, but he refused to get involved. From that time on, I tried to be more cooperative, but I kept getting bad performance evaluations from Mrs. Dillon. I became convinced that she was out to get me.

Finally, there was the unfortunate incident of November 14. At 3:00 a.m. I responded to a patient call per the usual procedure. The patient was new that day, so I had not had a chance to meet her. When I entered the room, the patient seemed startled, she screamed, and tried to get out of bed. However, she slipped, fell, and struck her head on a corner of the night table. She suffered a fractured skull, and died later that day. I subsequently learned that the patient was an important benefactor of the hospital, Mrs. Ethel Andover.

On the afternoon of November 14, I was summoned to a meeting in the Chief Administrator's office. I was asked to relate the details of the incident, which I did. I was then told that I was being placed on administrative leave pending the outcome of the investigation. Two weeks later I received a letter of termination from Mrs. Dillon.

The charge of negligence in the letter is totally false. Nurse Gray was the only other person awake on the floor at the time of the accident, and she was never even interviewed. The negligence charge was just a convenient way to get rid of me. Fortunately for Mrs. Dillon, the Andover family cooperated by agreeing to settle out of court, at the price of firing me.

/s/ Vincent Taylor, 3-2-82

WITNESS FOR THE PLAINTIFF

SHEILA GRAY

My name is Sheila Gray. I am 31 years old. I live at 509 Gallatin Street, N.W. I am a registered nurse.

I am currently engaged in private home care. Until early December, 1981, I was a staff nurse at Lance Memorial Hospital for Women.

I quit my job at Lance when I heard they fired Vince Taylor. That was the final straw. Nursing Director Dorothy Dillon had been out to get rid of him from the moment she became the Nursing Director. She made it clear to all of her staff that she believed that a man had no business working as a nurse in a women's hospital.

She was always checking up on Vince, more so than on any of the other nurses. To make matters worse, she went out of her way to break up any friendships that staff nurses might have had with Vince. All of us on the staff were friends, and some of us frequently went out for drinks or dinner after work. Mrs. Dillon thought it was just fine for the women on the staff to have that kind of camaraderie. But when I went out to dinner with Vince one night, Mrs. Dillon had a fit. She called me into her office and told me that I was being most unprofessional by going out with Vince. She warned me that it better not happen again. Then, in a further effort to be sure that Vince and I would not continue to see each other socially, she changed his shift and days, so that neither of us ever would have a day off together. The irony of the situation was that Vince and I were only work acquaintances; we weren't real close friends.

Mrs. Andover's accidental death was an unfortunate incident for all involved. However, Vincent Taylor was not negligent in any way. I know, because I was there that night. I had switched shifts with another nurse the previous day.

Vince and I were sitting at the Nurse's station at about 3:00 a.m. on the morning of November 14. Mrs. Andover's buzzer rang. Vince went to respond to the call. Her room was just two doors down the hall. As soon as Vince entered her room, I heard a scream. I jumped up, and quickly ran to the scene. When I entered the room, Vince was kneeling beside the patient who was on the floor. Vince told me to call a doctor immediately, and I did. Some of the other patients on the floor hear the commotion, so I went to work getting them calmed down and back to bed.

In the subsequent investigation of the incident, neither Mrs. Dillon nor Dr. Miller ever asked me for a report on what happened. I decided not to make a big deal about it at that time, because I didn't want to highlight the fact that I was working on the wrong shift. I was afraid that she might fire me for switching shifts.

A few days after the incident, I happened to be in the staff lounge. Dr. Miller's secretary, Sandy Johnson, came in looking for Dorothy Dillon. I told Sandy that I might be seeing Mrs. Dillon during the next half-hour. Sandy asked me to give Nurse Dillon a note from Dr. Miller, and she handed me a folded piece of paper.

I know I shouldn't have looked at the note, but curiosity got the better of me. I was shocked to see that the note concerned Vince, and that it indicated that the Andovers were putting pressure on the hospital. I slipped down to the library and made a copy of the note. Then I took the original, sealed it in an envelope, and put it in Mrs. Dillon's mailbox at our nurse's station. That way, she wouldn't suspect that I saw the note. Sandy really should have followed Dr. Miller's orders and delivered the note herself.

I saved the copy of the note, but I didn't show it to Vince until after he was fired. It was after I showed him the note that he decided to get a lawyer.

At a staff meeting on December 1, Mrs. Dillon announced that Mr. Taylor was no longer a member of Lance's nursing staff. She proceeded to comment that it would be a long time before another male nurse would come to work at Lance.

A few days after that meeting I decided that I could no longer work at Lance, knowing what I did about the circumstances surrounding Vince's case.

/s/ Sheila Gray, 3-5-82

WITNESS FOR THE PLAINTIFF

HARRIET DAWSON

My name is Harriet Dawson. I am 45 years old. I am the Assistant Director of Nursing Services at the Washington Hospital Center. I am specifically responsible for nursing personnel management at the Hospital Center.

I hired Vincent Taylor to our staff in 1978. His recommendations from Walter Reed and his prior military service were excellent. During his stay at the Hospital Center, he earned consistently favorable performance evaluations from his supervisors. On at least one or two occasions each month, as is my practice with all of the nursing staff, I observed Mr. Taylor directly while he was working. I was most impressed with his patience, sensitivity, and good humor with all of the patients.

Mr. Taylor was never specifically assigned to work on one of the all-female wards at the Hospital Center. This was not intentional, but simply the luck of the draw. We have forty male nurses on a total nursing staff of eight hundred. Nationally, only about three percent of all nurses are men; our proportion is five percent, which is just about the most of any area hospital, most of which average from one to four percent male nurses.

In his work in the emergency unit, later on in pediatrics, and then in the intensive care unit, Mr. Taylor did have many opportunities to work with female patients, and his care was always excellent and professional. Some of the patients even told me that, before they met Mr. Taylor, the had negative ideas about men in the nursing profession, but that the quality of his care changed their minds.

I always found Mr. Taylor to be extremely competent and cooperative. I consider cooperation to be an extremely important quality for a nurse to have. Just last week I had to fire a nurse who, while she was extremely competent, consistently questioned her supervisor's directions. A nurse who is not cooperative is a hindrance, and even a danger, to the work of any hospital.

From my three years of experience supervising Mr. Taylor, I believe that he is an asset to the nursing profession. We desperately need more young men and women like him. I certainly hope that his most unfortunate experience at Lance will not handicap his nursing career.

/s/ Harriet Dawson, 3-1-81

WITNESS FOR THE DEFENSE

DOROTHY DILLON

My name is Dorothy Dillon. I am 36 years old. I live at 5589 Highview Terrace, S.E. I am the Nursing Director at Lance Memorial Hospital for Women, where I have been employed for my entire nursing career.

The charges in this case are outrageous, to say the least, but certainly typical of the disruptive and unprofessional conduct that characterized Vincent Taylor's tenure as staff nurse at Lance Memorial.

When a staff nurse position opened in early 1982, Mrs. Linda Brownlee, our former nursing director, and I conferred regarding the qualifications for filling the position. At that time, I was the Assistant Nursing Director.

Mrs. Brownlee and I speculated on the number and type of applicants we might attract, given the current severe nursing shortage and severe economic times. We discussed the possibility that some men might apply for the position. I expressed some reservations about the advisability of adding men to the nursing staff at a small all-women's hospital, and I spelled out these reservations in a memo to Mrs. Brownlee. It certainly would have been foolhardy for us to think that the patients would be totally receptive to male nurses.

We had twenty-five applicants for the position, including three men. Vincent Taylor was the only male applicant who qualified on paper. Eight female applicants were similarly qualified. Mrs. Brownlee and I interviewed all nine qualified applicants.

Frankly, I was unimpressed with Mr. Taylor from the moment he walked through the door. He did not wear a tie, his jacket and shirt were wrinkled, and his hair needed a trim. I consider personal neatness to be a very important quality in a nurse, and Mr. Taylor was far from neat.

Mr. Taylor also used quite a bit of slang in his speech, and made some rather bad jokes about hospitals and patients. After the interview, I told Mrs. Brownlee that I felt Mr. Taylor was not the right personality for our nursing staff. However, and I will never understand this, Mrs. Brownlee felt that Mr. Taylor was "rather charming" and that he would be a welcome addition to the staff.

My first supervisory encounter with Mr. Taylor came about a month after Mrs. Brownlee's untimely death. I found it necessary to make some changes with regard to staff assignments. Mr. Taylor's was one of those I had to change. He responded to my memo of August 10, 1981 in an immature, unprofessional manner. I warned him that his conduct was totally unacceptable, and that any further outbursts would result in his dismissal.

The other problem that seemed to grow worse with each week was Mr. Taylor's romance with one of our young nurses, Ms. Gray. I certainly don't mind friendships among the nurses; in fact, I encourage friendship, because it makes the working environment much more pleasant. However, Mr. Taylor and Nurse Gray were certainly more than friends, and their relationship interfered with their work. The day shift nursing supervisor complained to me several times that Taylor and Gray would disappear into the supply room for a long time, or that they would be so engrossed in conversation that they would ignore patient calls and doctor requests. Even some of the doctors complained. Finally, I had no choice but to separate their work shifts.

The tragedy that we all fear from such nursing negligence finally came true on the morning of November 14. In direct violation of my orders, Nurse Gray changed her shift to be with Vince Taylor that night. Our hospital investigation concluded that Mrs. Andover fell out of bed before any nurse arrived on the scene. Other patients on the floor told me that they heard a patient calling for the nurses repeatedly, for maybe as much as one-half hour before they heard any nurses respond. Apparently, Mrs. Andover became so frustrated that she tried to get out of bed, but she fell in the process. Where Taylor and Gray were, what they were doing during that period of time can only be imagined, but they were clearly negligent. Even if Mrs. Andover wasn't using her nurse call button correctly, the patient reports indicate that her hollering was loud enough to be heard around the hallway.

I was in favor of firing both individuals immediately, but Dr. Miller insisted on an investigation and a personnel review. Because Mr. Taylor was the head nurse on the shift that night, and Ms. Gray wasn't even supposed to be there, our investigation focused on his actions. Dr. Miller and I finally agreed that the incident combined with his dismal performance were sufficient to terminate his employment. We were in the process of reviewing Nurse Gray's personnel file and considering disciplinary action when she resigned.

/s/Dorothy Dillon, 3-5-82

WITNESS FOR THE DEFENSE

RAYMOND MILLER

My name is Raymond Miller. I am 56 years old. I live at 3304 Harrison Street, N.W. I am a doctor, an orthopedic specialist, and chief administrator of Lance Memorial Hospital for Women, a position I have hald for the last four years.

Words could not convey my shock at the news of the death of Ethel Andover. Though in her late seventies, she was still an active member of Lance's Board of Directors, and a major benefactor of the hospital. She and I had been close personal friends for years. In fact, Ethel was the person mainly responsible for my transfer to Lance from Georgetown Hospital.

I knew that Ethel had been admitted to Lance on Friday, November 13, because I was scheduled to perform a hip replacement on her the following Monday morning. The tragedy of her death was made even worse by the fact that it was the negligence of Lance's own staff that killed her.

I launched an immediate investigation. At 3:00 p.m. on November 14 I called a meeting of Chief of Surgery Dr. Carter who had performed emergency surgery on Mrs.Andover, Nursing Director Dillon, and Mr. Vincent Taylor who was in charge of the night shift when the fatal accident occured. Dr. Carter explained the medical details of Mrs. Andover's death. Mrs. Dillon related facts surrounding the incident. According to her investigation, Mrs. Andover's repeated calls for nursing assistance were ignored. Finally, she became frustrated and tried to get out of bed herself. Because of her bad hip, her mobility was quite limited, and this may have contributed to her fall. However, that's not too important here, because she would not have fallen if the nurse had responded to her calls.

I was distressed that Mr. Taylor was apparently the negligent party. I liked Mr. Taylor; he brought a whole new mood and atmosphere to Lance. I knew that Dorothy Dillon was giving Vincent a hard time, but that was her procedure with all new nurses. I also knew that she was having a little difficulty adjusting to supervising a male nurse; the experience was new for all of us. I confess, I did not pay much attention to Mrs. Dillon's complaints about Taylor, nor to his complaints about her. Maybe I should have been more attentive to the problem.

Nevertheless, when Taylor gave his report about the Andover incident, I was chagrined to hear that his version of the facts was quite different from Mrs. Dillon's. I immediately knew that further investigation was necessary. I placed him on administrative leave until further notice. Mrs. Dillon suggested that Taylor be terminated immediately. However, knowing the history of personal animosity between them, I did not want to rush into a decision. I asked Mrs. Dillon to give me Taylor's personnel file.

Upon reviewing Taylor's file, I became convinced that the combination of his prior bad performance evaluations with his apparent negligence in the Andover case were sufficient to terminate his employment at Lance. I instructed Nurse Dillon to proceed with a termination letter.

As is our policy at Lance, and as the termination letter clearly states, any employee who is dismissed has a right to request a hearing on the matter. Mr. Taylor did not request such a hearing. Instead, he proceeded with this lawsuit.

Understandably, the Andover family was upset about the nature of the tragedy. It is true that Mrs. Andover had raised some objections to our hiring a male nurse, but she was willing to allow the experiment. However, contrary to a charge Mr. Taylor is trying to raise in this case, the decision to terminate his employment was based on his performance and his failure to perform. This decision was not dictated by the Andover family.

/s/ Raymond Miller, M.D. 3-7-82

WITNESS FOR THE DEFENSE

DONNA WINTERS

My name is Donna Winters. I am 33 years old. I live at 1821 Aspen Street, S.E. I am a marketing representative for the Datamax Corporation.

On August 3, 1981, I was admitted to Lance Memorial Hospital for some tests. I stayed for one week. I was generally satisfied with everything and everyone at Lance, with the exception of Vincent Taylor, one of the nurses on my floor.

I guess I was a bit surprised the first time I met Mr. Taylor. I really didn't expect a guy to be working as a nurse in a women's hospital. But I didn't particularly mind the fact that he was one of my nurses. Most of the doctors were men, so, why not a nurse?

The problem with Taylor had nothing to do with the fact that he was male. The problem was his personality and style, and I know that many of the other patients felt the same way I did. He was too loud, always making stupid little jokes. He was probably trying to cheer us up, but he really was not very comforting at all.

The first time I met Mr. Taylor was when he came in to take my temperature late on the first day I was on the floor. I was sound asleep. He yelled in my ear, "Rise and Shine!" I was pretty drowsy and didn't respond at first, and then he shouted, "Look, lady, I've got better things to do, so open your mouth," and he shoved the thermometer in. I guess he was in a hurry to get back to his friend Nurse Gray.

I was most upset the night he dropped a full dinner tray all over me. He'd been clowning around, as usual, and he was dancing across the room with my dinner tray, holding it up in the air with one hand, like a waiter in a play. Actually, it was pretty funny. But he tripped slightly just as he neared my bed, and the tray flew out of his hand and all over me. At that very moment, Nurse Dillon came into my room, so she got to see the incident. She ordered him to leave immediately. Then she helped me get cleaned up. I understand that, after that incident, Taylor was assigned to the late night shift so that he would not be able to spend much time around the patients while they were awake. Everyone was relieved to hear that.

/s/ Donna Winters, 3-4-82

DOCUMENTS

LANCE MEMORIAL
Hospital for Women

February 15, 1981

MEMORANDUM

TO: Mrs. Linda Brownlee, Nursing Director

FROM: Mrs. Dorothy Dillon, Assistant Nursing Director

RE: Hiring Male Nurses to Work at Lance

In line with our conversation yesterday, I would like to underscore these concerns I have regarding hiring men to work as nurses at Lance:

1) Patient impact: Patients who choose Lance expect a predominantly female environment for their care. Nursing care is a very personal business, and our patients may be distressed to discover that Lance employs men as well as women to deliver that care. Should we employ men, the patients will have to be prepared to accept them.

2) Staff impact: Without doubting anyone's sense of professionalism, having men on the nursing staff may lead to relationships that interfere with work. We may have to create new nursing personnel policies to accommodate having men on our staff.

I am not totally opposed to hiring a male nurse onto our staff, but we must be sure that he is the right person. Because nursing is traditionally a female profession, and because Lance's purpose and reputation is as a women's hospital, a change in our staff composition may be difficult for some people to accept. I urge caution.

DD/yz

From the Desk of — RAYMOND MILLER, M.D.

11-20

D —

CLYDE ANDOVER WANTS TO KNOW WHY TAYLOR WAS HIRED — MALE NURSE ISSUE. HE MIGHT — CAUSE TROUBLE WITH ETHEL'S WILL. WE MUST MOVE QUICKLY TO DISPOSE OF TAYLOR CASE.

SEE ME A.S.A.P.

RM

LANCE MEMORIAL HOSPITAL FOR WOMEN

PERSONNEL FILE: VINCENT TAYLOR

HIRED: 3-1-81

TERMINATED: 11-25-81

CONFIDENTIAL

LANCE MEMORIAL
Hospital for Women

August 10, 1981

MEMORANDUM

TO: VINCENT TAYLOR, Staff Nurse

FROM: DOROTHY DILLON, Nursing Director

RE: Transfer Request and Reassignment

Per your memorandum to Mrs. Brownlee of June 28, 1981: Your request for transfer to the cardiac care unit is denied. Further requests will not be considered unless significant improvement occurs in your overall work performance.

On another matter, as a result of a schedule shake-up, you have been reassigned to the 11:00 p.m. - 7:00 a.m. shift, effective on August 15. Your days will be W-Th-F-S-S.

See me if you have any questions about this.

DD: mhz

PEF = 10-N +++ LANCE MEMORIAL HOSPITAL DATE 4-10-81

EMPLOYEE NAME Vincent Taylor SUPERVISOR Mrs. Dillon

+++PERSONNEL EVALUATION FORM #10-N FOR FORTY-FIVE DAY SUPERVISORY PERIODS.

GENERAL RATINGS: 1=unacceptable; 2=poor; 3=fair; 4=good; 5=preferred

IF RATING INDICATES LESS THAN PREFERRED PERFORMANCE, PLEASE INDICATE REASONS WHY IN THE COMMENTS SECTION AFTER EACH ITEM.

PERFORMANCE AREA	RATING (CIRCLE ONE)					COMMENTS
1. Attendance	1	2	3	4	(5)	
2. Promptness	1	2	3	4	(5)	
3. Appearance	1	(2)	3	4	5	Sloppy; Disabled
4. Organization	1	(2)	3	4	5	Unfocused; sloppy
5. Orderliness of Work Habits	(1)	2	3	4	5	Leaves charts, records all over!
6. Thoroughness	1	(2)	3	4	5	Easily distracted.
7. Technical Competence	1	2	3	4	(5)	
8. Professionalism	(1)	2	3	4	5	Totally unacceptable — esp. relationship w/ S. Gray!
9. Responsiveness to Patient Requests	1	(2)	3	4	5	Slow
10. Patient Satisfaction with nurse care	1	(2)	3	4	5	Spills trays; handles too roughly — many complaints
11. Cooperation with Peers	1	2	(3)	4	5	→ Most nurses find Taylor loud and overbearing
12. Cooperation with Supervisor	(1)	2	3	4	5	

OTHER COMMENTS: Mrs. Taylor is totally disrespectful and uncooperative. Have discussed this problem with Dr. Miller — he says watch and wait.

ACTION: I have given Taylor several verbal warnings, but no improvement. So need to make written report.

Dorothy Dillon Supervisor's signature

PEF # 10-N +++ LANCE MEMORIAL HOSPITAL DATE 11-1-81

EMPLOYEE NAME Vincent Taylor SUPERVISOR Dillon

+++PERSONNEL EVALUATION FORM #10-N FOR FORTY-FIVE DAY SUPERVISORY PERIODS.

GENERAL RATINGS: 1=unacceptable; 2=poor; 3=fair; 4=good; 5=preferred

IF RATING INDICATES LESS THAN PREFERRED PERFORMANCE, PLEASE INDICATE REASONS WHY IN THE COMMENTS SECTION AFTER EACH ITEM.

PERFORMANCE AREA	RATING (CIRCLE ONE)					COMMENTS
1. Attendance	1	2	3	(4)	5	Absent twice
2. Promptness	1	2	3	(4)	5	Late 3x
3. Appearance	1	(2)	3	4	5	Needs haircut
4. Organization	1	(2)	3	4	5	Cannot prioritize tasks
5. Orderliness of Work Habits	1	2	(3)	4	5	Has improved a little - improved -
6. Thoroughness	1	2	(3)	4	5	
7. Technical Competence	1	2	3	4	(5)	
8. Professionalism	1	(2)	3	4	5	a little better since being separated from Jo
9. Responsiveness to Patient Requests	(1)	2	3	4	5	Too slow, rough, impatient
10. Patient Satisfaction with nurse care	1	(2)	3	4	5	Most dislike
11. Cooperation with Peers	1	2	(3)	4	5	Night shift work keeps Taylor away from most
12. Cooperation with Supervisor	(1)	2	3	4	5	

OTHER COMMENTS: Mr. Taylor remains uncooperative and sullen. His attitude is very bad. This can't go on much longer.

ACTION: Still watching and waiting. Still giving Taylor vesbal warnings 2-3 Something must happen soon.

D Dillon
Supervisor's signature

LANCE MEMORIAL
Hospital for Women

November 25, 1981

Mr. Vincent Taylor
1318 Jackson Street, N.E.
Washington, D.C. 20017

Dear Mr. Taylor:

Pursuant to our investigation of the death of Mrs. Ethel Andover, and upon a general review of your personnel file, Dr. Miller and I agree that the time is past due to terminate your employment with Lance Memorial. Your termination is effective immediately. Enclosed with this letter is a check representing both your back pay, including the time for administrative leave, and two weeks severance pay.

This action is based upon several grounds, specifically:

1) Negligence in the care of a patient, resulting in her death. In the case of Mrs. Andover, the facts clearly indicate that you failed to respond to her call for assistance in a timely fashion.

2) Lack of cooperation with your supervisor. On a number of occasions, as recorded in your personnel file, you have seen fit to challenge my directions. Despite my repeated warnings to you, you have not improved in this area.

3) Consistently fair-to-poor reports from patients regarding the quality of care which you provided to them. While Lance does not make a practice of recording specific patient comments in the personnel file, I passed on to you each such comment as I received it. Yet, you did not demonstrate improvement in your interaction with patients.

Under Lance policy, you have a right to a hearing on this matter. You may call Dr. Miller to request such a hearing.

Sincerely,
Dorothy Dillon
Dorothy Dillon, R.N.
Nursing Director

1982 STREET LAW MOCK TRIAL PROGRAM

RULES OF EVIDENCE

RULES OF THE PROGRAM

1982 MOCK TRIAL COMPETITION

SIMPLIFIED RULES OF EVIDENCE AND PROCEDURE

In American trials, elaborate rules are used to regulate the admission of proof (i.e., oral or physical evidence). These rules are designed to ensure that both parties recieve a fair hearing and to exclude any evidence deemed irrelevant, incompetent, untrustworthy, or unduly prejudicial. If it appears that a rule of evidence is being violated, an attorney may raise an objection to the judge. The judge then decides whether the rule has been violated and whether the evidence must be excluded from the record of the trial.

Formal rules of evidence are quite complicated and differ depending on the court where the trial occurs. For purposes of this mock trial competition, the rules of evidence have been modified and simplified below.

A. Witness Examination

1. Direct examination (attorneys call and question witnesses)

   a. Form of questions: Witnesses may not be asked leading questions by the attorney who calls them. A leading question is one that suggests to the witness the answer desired by the examiner, and often suggests a "yes" or "no" answer. Direct questions generally are phrased to evoke a set of facts from the witness.

      Example of a direct question: "Mr. Taylor, what is your nursing background?"

      Example of a leading question: "Mrs. Dillon, did Mr. Taylor ever come to work in sloppy clothes?"

   b. Narration: While the purpose of direct examination is to get the witness to tell a story, the questions must ask for specific information. The questions must not be so broad that the witness is allowed to wander or "narrate" a whole story. Narrative questions are objectionable.

Example of a narrative question: "Ms. Gray, what happened when Mr. Taylor came to work at Lance?"

Narrative answers: At times, a direct question may be appropriate, but the witness' answer may go beyond the facts for which the question asked. Such answers are subject to objection on the grounds of narration.

c. Scope of witness examination: Direct examination may cover all facts relevant to the case of which the witness has first-hand knowledge. Any factual areas examined on direct examination may be subject to cross-examination.

d. Character: For mock trial purposes, evidence about the character of a party may not be introduced unless the person's character is an issue in the case. For example, whether one spouse has been unfaithful to another is a relevant issue in a civil trial for divorce, but is not an issue in a criminal trial for larceny. Similarly, a person's violent temper may be relevant in a criminal trial for assault, but it is not an issue in a civil trial for breach of contract.

e. Refreshing Recollection: If a witness is unable to recall a statement made in the affidavit, or if the witness contradicts the affidavit, the attorney on direct may seek to introduce into evidence that portion of the affidavit that will help the witness to remember. (See Part B.5 on introduction of evidence).

2. Cross-examination (questioning of the other side's witnesses)

a. Form of questions: An attorney may ask leading questions when cross-examining the opponent's witnesses. Questions tending to evoke a narrative answer should be avoided (these usually begin with "how", "why" or "explain").

Example of a leading question: "Dr. Miller, isn't it true that you had reason to suspect that Nurse Dillon was treating Mr. Taylor unfairly?"

b. Scope of witness examination: Attorneys may only ask questions that relate to matters brought

out by the other side on direct examination, or to matters relating to the credibility of the witness. This includes facts and statements made by the witness for the opposing party. Note that many judges allow a broad interpretation of this rule.

Example: If the plaintiff in a car accident case never mentions damages to the car, then the defense cannot ask questions on cross-examination about the repair costs.

c. Impeachment: On cross-examination, the attorney may want to show the court that the witness should not be believed. This is called impeaching the witness. It may be done by asking questions about prior conduct that makes the witness' credibility (truth-telling ability) doubtful. Other times, it may be done by asking about evidence of certain types of criminal convictions. Impeachment may also be done by introducing the witness' affidavit, and asking the witness whether he or she has contradicted something which was stated in the affidavit.

Example (Prior Conduct): "Is it true that you beat your nephew when he was six years old and broke his arm?"

Example (Past Conviction): "Is it true that you've been convicted of assault?"

(NOTE: These types of questions may only be asked when the questioning attorney has information that indicates that the conduct actually happened.)

3. Re-direct examination

If the credibility or reputation for truthfulness of the witness has been attacked on cross-examination, the attorney whose witness has been damaged may wish to ask several more questions. These questions should be limited to the damage the attorney thinks has been done and should be phrased so as to try to "save" the witness' truth-telling image in the eyes of the court. Re-direct examination is limited to issues raised by the attorney on cross-examination.

B. Additional Rules of Evidence

1. Hearsay

Any evidence of a statement made by someone who is not present in the court which is offered to prove the truth of a fact, a piece of evidence or any witness' testimony is hearsay and not permitted.

Example: Witness Winters says, "Some of the other patients told me that Mr. Taylor was clumsy and not very gentle with them."

Though hearsay is not usually allowed at a trial, a judge may sometimes allow it if:

a. it was said by a party in the case and contains evidence which goes against his side (e.g., in a murder case, the defendant told someone he committed the murder). This is sometimes called the "Admission against Interest" Exception; or

b. a person's state of mind is an important part of the case and the hearsay consists of evidence of what someone said which described that particular person's state of mind (sometimes called "State of Mind" Exception).

2. Opinions of Witnesses

As a general rule, witnesses may not give opinions. Certain witnesses who have special knowledge or qualifications may be qualified as "experts". An expert must be qualified by the attorney for the party for which the expert is testifying; this means that before an expert can be asked an expert opinion, the questioning attorney must bring out the expert's qualifications and experience.

All witnesses may offer opinions based on the common experience of laypersons in the community and of which the witnesses have first-hand knowledge.

Examples: "I think Taylor was clumsy." (allowed)
"I think Taylor was not qualified to be a nurse." (not allowed unless made by nurse supervisor)

No witness may give an opinion about how the case should be decided. Example: "Ms. Gray, would you say that Vince Taylor was made a victim of sex discrimination?" This is called the "ultimate issue" question.

3. Lack of Personal Knowledge: A witness may not testify to any matter of which the witness has no personal knowledge.

   Example: If Nurse Gray never observed Mrs. Dillon speak to Mr. Taylor, she could not say, "Mrs. Dillon always spoke to Vince in a rude and abrupt manner."

4. Relevance of Evidence

   Generally, only relevant testimony and evidence may be presented. This means that the only physical evidence and testimony allowed is that which tends to make a fact which is important to the case more or less probable than the fact would be without the evidence. However, if the relevant evidence is unfairly prejudicial, may confuse the issues, or is a waste of time, it may be excluded by the court. This may include testimony, pieces of evidence and demonstrations that have no direct bearing on the issues of the case, or have nothing to do with making the issues clearer.

   Example: The defense asks, "Mr. Taylor, how did you like working in the pediatrics unit?" This is irrelevant unless Taylor's satisfaction with that assignment somehow relates.

5. Introduction of physical evidence

   There is a special procedure for introducing physical evidence during a trial. The physical evidence must be relevant to the case and the attorney must be prepared to defend its use on that basis. Below are the basic steps to use when introducing a physical object or document for identification and/or use as evidence.

   a. "Your honor, I ask that this personnel file be marked for identification as Petitioner's Exhibit A." (Show document and hand it to clerk for marking.)

   b. (Show personnel file to opposing counsel, who may make an objection to the offering at this time.)

   c. (Show personnel file to witness.) "Mr. Taylor, do you recognize this document which is marked as Plaintiff's Exhibit A for identification?" (The witness should say yes and identify the document.)

At this point, the attorney may proceed to ask the witness a series of questions about Exhibit A.

d. If the attorney wishes to place the document into evidence, say, "Your honor, I offer this personnel file for admission into evidence as Plaintiff's exhibit A, and ask the court to so admit it."

e. Get ruling from the court on admission and hand the document to the judge.

C. Objections

An attorney can object any time the opposing attorneys have violated the rules of evidence. The attorney wishing to object should stand up and do so at the time of the violation. When an objection is made, the judge will ask the reason for it. Then the judge will turn to the attorney who asked the question, and that attorney usually will have a chance to explain why the objection should not be accepted ("sustained") by the judge. The judge will then decide whether a question or answer must be discarded, because it has violated a rule of evidence ("objection sustained"), or whether to allow the question or answer to remain on the trial record ("objection overruled").

Following are standard objections:

1. Irrelevant evidence: "I object, your honor. This testimony is irrelevant to the facts of this case."

2. Leading questions: "Objection. Counsel is leading the witness." (Remember, this is only objectionable when done on direct examination.)

3. Improper character testimony:

   a. "Objection. The witness' character or reputation has not been put in issue."

   b. "Objection. Only the witness' reputation/character for truthfulness is at issue here."

4. Beyond the scope of direct examination:

   "Objection. Counsel is asking the witness about matters that did not come up in direct examination."

5. Hearsay: "Objection. Counsel's question/the witness' answer is based on hearsay." (If the witness makes a hearsay statement, the attorney should also say, "and I ask that the statement be stricken from the record.")

6. Opinion: "Objection. Counsel is asking the witness to give an opinion."

7. Lack of personal knowledge: "Objection. The witness has no personal knowledge that would enable him to answer this question."

D. Miscellaneous rules of procedure

1. Re-direct and re-cross examination are permissible; re-direct is limited to the scope of cross; re-cross is limited to the scope of the re-direct.

2. For mock trial purposes, motions for dismissal at the end of the plaintiffs' case are not to be used.

3. Order of closing arguments: first - plaintiffs; second - defense; rebuttal by plaintiffs is permitted.

1982 MOCK TRIAL PROGRAM

RULES OF THE PROGRAM

The Annual Mock Trial Program is governed by the rules set forth below. These rules are designed to ensure excellence in presentation and fairness in judging all trials.

The trials will take place at the end of March and the beginning of April. The logistics of the trial scheduling is spelled out in the Memorandum to Street Law Teachers entitled "Mock Trial Instructions" in the Teacher Materials. These rules also incorporate all other rules and instructions given to teachers.

I. TEAM PRESENTATIONS

1. The Statement of Facts and any additional stipulations may not be disputed at trial.

2. Certain witnesses are stipulated to as experts, and their expert qualifications for the purpose for which they are testifying may not be challenged or impeached by the opposing side.

3. Each witness is bound by the facts in the given witness statement. All participants agree that the witness statements are signed and sworn affidavits.

4. If a witness testified in contradiction of a fact in the witness statement, the opposition must show this on cross-examination through correct use of the affidavit for impeachment. This procedure is spelled out in the Rules of Evidence.

5. If a witness invents an answer which is likely to affect the outcome of the trial, the opposition may object and request a bench conference. The judge, with the assistance of the Street Law staff member in attendance, will decide whether to allow the testimony. The judge may consider such inventions of facts in making the decision concerning the best team presentation.

6. All participants are expected to display proper courtroom decorum and good sportsmanlike conduct. The decisions of the judge with regard to rules challenges and all other decisions are final.

7. Students may read other cases, materials, articles, etc. in preparation for the mock trial. However, they may only cite the materials given, and they may only introduce into evidence those documents given in the official mock trial packet.

8. The trial proceedings are governed by the Mock Trial Simplified Rules of Evidence. Other more complex rules may not be raised in the trial.

9. During the actual trial, instructors and all other observers may not talk to, signal, or otherwise communicate with or coach their teams.

10. All teams should consist of from two to six attorneys, and three witnesses, with alternates for each position.

11. Teams are expected to be present in the Moot Courtroom one-half hour before the starting time of the trial.

12. The starting time of any trial will not be delayed for longer than ten minutes. Incomplete teams will have to begin without their other members, or with alternates. Teams without a sufficient number of participants to start the trial will forfeit the match.

II. JUDGING

1. Judges for the Mock Trials may include Judges of the District of Columbia, Law Center faculty, and members of the D.C. Bar.

2. All judges receive the "Guidelines for Judges," "Judge's Score Sheet," the Rules of Evidence, the Statement of Facts and Issues, and any legal readings issued in regard to the Mock Trial. Judges do not receive the witness affidavits and documentary evidence. Attorneys may choose to introduce these items into evidence for the judge's consideration during the trial.

3. Judges are asked to make two decisions: one on the legal merits of the case, and one on the best team presentation. The criteria for the legal decision are outlined in the Statement of Facts and Issues. The criteria for the presentation decision are discussed in the Guidelines for Judges and Score Sheet.

4. All decisions of the judges are final.

TIME GUIDELINES FOR MOCK TRIALS

These time and question guidelines should be used by all classes in preparing their cases for trial. Judges will be notified of these guidelines, and may hold the students to them strictly, at the discretion of the judge.

OPENING STATEMENTS	3 minutes each
DIRECT EXAMINATIONS	10 minutes each (10-15 questions)
CROSS EXAMINATIONS	5 minutes each (7-10 questions)
CLOSING ARGUMENTS	5 minutes each

With these guidelines, trials should last a little under two hours. Because the trials are frequently scheduled back-to-back, every effort should be made to adhere to these guidelines.